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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 248

JOHN HOWARD LAWSON, PETITIONER

v.

UNITED STATES OF AMERICA

No. 249

DALTON TRUMBO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The single opinion of the Court of Appeals affirming the convictions of both petitioners (L. R. 567-572; T. R. 651-656 [1]) is not yet reported.

[1] The petitions and records in the two cases are designated by the letters L. and T., respectively.

JURISDICTION

The judgments of the Court of Appeals were entered June 13, 1949 (L. R. 573; T. R. 657). The petitions for writs of certiorari were filed August 11, 1949, within the time as extended by orders of Mr. Justice Jackson (L. R. 579; T. R. 663). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a) F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the House Committee on Un-American Activities was constitutionally authorized to investigate Communist infiltration of the motion picture industry.

2. Whether, consistently with the First Amendment, witnesses could be required by the Committee to state whether they were members of the Communist Party and the Screen Writers' Guild.

3. Whether the members of the Committee before whom petitioners appeared constituted a competent subcommittee and, if so, whether the determination of that question was properly left to the jury.

4. Whether the jury was properly instructed in respect of the proof that petitioner Lawson refused to answer the Committee's question.

5. Whether the jury was properly instructed in respect of petitioner Trumbo's right to state objections to questions put to him by the Committee.

6. Whether petitioner Lawson's cross-examination of the chief government witness was unduly restricted.

7. Whether the court erred in excluding evidence that in reporting petitioner Lawson's contumacy to the House, the Committee omitted matters concerning petitioner's refusal to testify.

8. Whether government employees should have been excluded from the juries which tried petitioners because of the nature of the charges against them.

9. Whether the method of selecting the jury panel gave it an unrepresentative character.

STATUTES AND RESOLUTION INVOLVED

R. S. § 102, as amended (2 U.S.C. 192), provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

R.S. § 104, as amended (2 U.S.C. 194), provides:

> Whenever a witness summoned as mentioned in section 102 fails to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, and the fact of such failure or failures is reported to either House while Congress is in session, or when Congress is not in session, a statement of fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action.

Rule XI (q) of the Rules of the House of Representatives, as amended by Section 121 (b) of the Legislative Reorganization Act of 1946, c. 753, 60 Stat. 812, 823, 828, and thereafter adopted by the House of Representatives (H. Res. No. 5, 80th Cong., 1st Sess., 93 Cong. Rec. 38) provides:

> The Committee on Un-American Activities, as a whole or by subcommittee, is authorized

to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

STATEMENT

Petitioners were indicted separately in the United States District Court for the District of Columbia for violations of R. S. § 102, *supra*. The indictments charged that upon their appearances, pursuant to summonses, to testify before the House Committee on Un-American Activities, they refused to answer the question whether they were or ever had been members of the Communist Party. Petitioner Trumbo was charged, in addition, with having refused to state whether he was a member of the Screen Writers' Guild (L. R. 9-10; T. R. 9-10).

The evidence adduced by the Government at petitioners' separate trials was substantially similar, so far as the issues presented here are concerned, and for that reason the following summary deals principally with Lawson's case.

On September 19, 1947, petitioners were served with subpoenas directing them to appear and testify before the Committee on October 23, 1947. The date for their appearance was subsequently postponed to October 27, 1947. (L. R. 381-382; T. R. 580-582.) a member of the Screen Writers' Guild. (L. R. 9-10; T. R. 9-10.)

On October 20, 1949, in the course of its investigation of alleged Communist infiltration into the motion picture industry (L. R. 188), the Committee heard Samuel Grosvenor Wood, a leading producer and director, testify that in his opinion petitioner Lawson was a Communist and was "active in every piece of Communist work going on"

(L. R. 220, 224). The following day John Charles Moffitt, a motion picture critic, told the Committee that a former secretary of the Communist Party for Los Angeles County had testified before the Tenney Committee of the California Legislature that Lawson was sent to Los Angeles by the Communist Party to organize its activities in Hollywood. Moffitt also stated that while he was a member of the Screen Writers' Guild, of which Lawson was the first president, he had discovered that it was a "Communist-front" organization. Moffitt testified that he had heard Lawson state that a writer should not attempt to create an entirely Communist script, because it would be identified and destroyed in the front office; that every writer should try to get five minutes of Communist doctrine in every script, particularly in expensive scenes in which important stars spoke the words, so that if it should be discovered by the front office, the studio would be deterred from deleting the matter by the expense involved in remaking the scene. (L. R. 227-228.)

On October 22, 1947, Howard Rushmore, who was a prominent member of the Communist Party from 1936 to 1939, testified before the Committee that he had met Lawson in 1937 or 1938 at a meeting of the cultural commission of the Communist Party at the Party's headquarters in New York City. This commission, which was a quasi-subcommittee of the Central Committee of the Party (the governing body), had been set up by Alex-

ander Trachtenberg, a member of the Political Bureau of the Party, upon his return from Moscow about 1934. Trachtenberg told Rushmore that the regular reports of the commission's activities were delivered to Moscow by himself or a courier at least once a year. According to Rushmore, Lawson was in charge of the Party's activities in Hollywood during the time Rushmore was in the Party. (L. R. 224-226.)[2]

On October 27, 1947, when Lawson appeared, and the following day, when Trumbo appeared, Chairman Thomas and two members of the Committee were present. The Chairman announced: "The record will show that a subcommittee is present, consisting of Mr. Vail, Mr. McDowell, and Mr. Thomas" (L. R. 183).[3] After Lawson was sworn, there occurred the colloquy set forth at pages 188-197 of the record, the following portion of which is particularly germane (L. R. 195-197):

> Mr. Stripling:[4] Mr. Lawson, are you now, or have you ever been a member of the Communist Party of the United States?
>
> Mr. Lawson: In framing my answer to that question I must emphasize the points that I have raised before. The question of communism is in no way related to this inquiry, which is an attempt to get control of the screen and

[2] The Committee was informed also that Trumbo was a Communist (see T. R. 245-251).

[3] An announcement in almost identical form was made at the opening of Trumbo's testimony (T. R. 381).

[4] Mr. Stripling was the Committee's chief investigator (L. R. 187).

to invade the basic rights of American citizens in all fields.

Mr. McDowell: Now, I must object——

Mr. Stripling: Mr. Chairman——

(The chairman pounding gavel.)

Mr. Lawson: The question here relates not only to the question of my membership in any political organization, but this committee is attempting to establish the right——

(The chairman pounding gavel.)

Mr. Lawson (continuing): Which has been historically denied to any committee of this sort, to invade the rights and privileges and immunity of American citizens, whether they be Protestant, Methodist, Jewish, or Catholic, whether they be Republicans or Democrats or anything else.

The Chairman (pounding gavel): Mr. Lawson, just quiet down again.

Mr. Lawson, the most pertinent question that we can ask is whether or not you have ever been a member of the Communist Party. Now, do you care to answer that question?

Mr. Lawson: You are using the old technique, which was used in Hitler Germany in order to create a scare here——

The Chairman (pounding gavel): Oh——

Mr. Lawson: In order to create an entirely false atmosphere in which this hearing is conducted——

(The chairman pounding gavel.)

Mr. Lawson: In order that you can then smear the motion-picture industry, and you can proceed to the press, to any form of communication in this country.

The Chairman: You have learned——

Mr. Lawson: The Bill of Rights was established precisely to prevent the operation of any committee which could invade the basic rights of Americans.

Now, if you want to know——

Mr. Stripling: Mr. Chairman, the witness is not answering the question.

Mr. Lawson: If you want to know——

(The chairman pounding gavel.)

Mr. Lawson: About the perjury that has been committed here and the perjury that is being planned.

The Chairman: Mr. Lawson——

Mr. Lawson: You permit me and my attorneys to bring in here the witnesses that testified last week and you permit us to cross-examine these witnesses, and we will show up the whole tissue of lie——

The Chairman (pounding gavel): We are going to get the answer to that question if we have to stay here for a week.

Are you a member of the Communist Party, or have you ever been a member of the Communist Party?

Mr. Lawson: It is unfortunate and tragic that I have to teach this committee the basic principles of American——

The Chairman (pounding gavel): That is not the question. That is not the question.

The question is: Have you ever been a member of the Communist Party?

Mr. Lawson: I am framing my answer in the only way in which any American citizen can frame his answer to a question which absolutely invades his rights.

The Chairman: Then you refuse to answer that question; is that correct?

Mr. Lawson: I have told you that I will offer my beliefs, affiliations, and everything else to the American public, and they will know where I stand.

The Chairman (pounding gavel): Excuse the witness——

Mr. Lawson: As they do from what I have written.

The Chairman (pounding gavel): Stand away from the stand——

Mr. Lawson: I have written Americanism for many years, and I shall continue to fight for the Bill of Rights, which you are trying to destroy.

The Chairman: Officers, take this man away from the stand——[5]

On November 24, 1947, the Committee submitted to the House of Representatives reports that petitioners were in contempt of the House (L. R. 383-392; T. R. 582-592). They included copies of the

[5] Petitioner Trumbo's testimony before the Committee appears at pages 381-390 of the record in his case. In addition to the question as to membership in the Communist Party, which he also refused to answer, he was asked and refused to answer the question, "Are you a member of the Screen Writers Guild?" (T. R. 386).

subpoenas served upon petitioners and the transcripts of their testimony. Pursuant to House resolutions, the Speaker certified the reports to the United States Attorney (L. R. 393-394; T. R. 593) and the indictments followed on December 5, 1947.

Petitioners moved to dismiss the indictments on the grounds that the resolution prescribing the authority of the Committee was unconstitutional and that the questions concerning alleged trade union and political affiliations were not pertinent to the questions under inquiry (L. R. and T. R. 11-13). They also moved for a change of venue on the ground that an impartial trial was impossible in the District of Columbia, due primarily to alleged intimidation to which government employees are subject by Executive Order 9835, the "loyalty order," and because of the nature of the charges against petitioners and their alleged association with organizations on the Attorney General's "subversive list" (L. R. 13-25; T. R. 17-28). These motions were denied, as were motions to dismiss the jury panels because they contained many government employees and, in addition, were selected in a manner not calculated to obtain a representative cross-section of the community (L. R. 6, 29-30, 98; T. R. 6-7, 71, 199). Petitioners challenged for cause the government employees on the jury, as well as those who had any immediate relatives in government service (L. R. 166; T. R. 218). These challenges were overruled. The jury in the Lawson

case included three government employees, one who received a pension from the government, and one whose mother was on a government pension.[6] Eight government employees were on the jury in the Trumbo case (T. R. 216-217, 227, 230).

In each case, after hearing testimony outside the presence of the jury, the trial court ruled that the questions which the petitioner refused to answer were pertinent to the Committee's inquiry (L. R. 242; T. R. 351) and so charged the jury (L. R. 355; T. R. 544).

Petitioners were found guilty as charged (L. R. 43; T. R. 28-29) and on May 21, 1948, each was sentenced to imprisonment for one year and to pay a fine of $1,000 (L. R. 44; T. R. 29).[7] Upon appeal to the Court of Appeals, the judgments of conviction were affirmed (L. R. 573; T. R. 657).

ARGUMENT

1. Petitioners' attacks on the constitutional validity of the Committee on Un-American Activities and, specifically, on its authority to investigate Communist infiltration of the motion picture industry (L. Pet. 61-68, 77-87; T. Pet. 24, 25) raise issues

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[6] Petitioner Lawson states (Pet. 105) that five government employees were on the jury, but the record indicates that the correct number is three (L. R. 139-140, 152-168).

[7] A general sentence which did not exceed the maximum sentence allowable under either of the two counts on which he was convicted was imposed on petitioner Trumbo. Hence, if the validity of his conviction on the first count is sustained, it will be unnecessary to consider the second count. *Pinkerton* v. *United States*, 328 U. S. 640, 641-642; *Hirabayashi* v. *United States*, 320 U. S. 81, 85, 105.

which, in the main, were rejected by the Court of Appeals for the Second Circuit in *Josephson* v. *United States,* 165 F. 2d 82, 87-92, certiorari denied, 333 U.S. 838, and by the Court of Appeals for the District of Columbia Circuit in *Barsky* v. *United States,* 167 F. 2d 241, certiorari denied, 334 U.S. 843, petition for rehearing pending; *Eisler* v. *United States,* 170 F. 2d 273 ,279, certiorari granted, 335 U.S. 857, cause ordered removed from docket, 338 U.S. 189; *Dennis* v. *United States,* 171 F. 2d 986, 987-988, certiorari granted, limited to a different question, June 27, 1949; *Marshall* v. *United States,* not yet reported, petition for certiorari pending, No. 197; and *Morford* v. *United States,* not yet reported, petition for certiorari pending, No. 236. Our position on that question has been fully stated in our brief in *Eisler* v. *United States, supra,* No. 255, October Term, 1948, pp. 22-64, to which the Court is respectfully referred.

2. These cases involve the question whether, consistently with the First Amendment, the Committee may validly question members of the motion picture industry as to their membership in the Communist Party or Communist-controlled organizations.

We do not think it can be gainsaid that the courts below correctly held, as a matter of law (*Sinclair* v. *United States,* 279 U.S. 263, 298), that the questions put to petitioners were calculated to elicit information pertinent to the subject matter of the Commit-

tee's inquiry. Obviously, an investigation of the nature and scope of the Communist program and its activities involves in no small measure investigations of the character and number of its adherents. And the accuracy of the information which the Committee obtains concerning the Party's operations depends upon the knowledge of the witnesses who appear before it. For those reasons alone it would seem that it was pertinent to inquire of petitioners whether they were and are members of the Party and of an alleged Communist-controlled organization. Petitioners argue, however (L. Pet. 46), that disclosures from their lips would have been superfluous because the Committee already had independent information (which it apparently believed) that they were connected with the Party. But admissions by petitioners would have served at the very least to corroborate the information obtained from other sources and thus to eliminate any doubts which otherwise might have lingered, if not in the minds of the Committee, then in the minds of other Congressmen to whom the Committee's findings and recommendations might be transmitted eventually for legislative action. Moreover, if membership in the Party or the Guild had been denied by petitioners, in the face of strong evidence to the contrary, those denials might have affected their credibility on other parts of their testimony, and might have served also to confirm the allegations concerning the conspiratorial nature of the Communist Party's infiltration of the

motion picture industry. In any event, in an inquiry of this nature, it would seem that questions to elicit Communist and "Communist-front" *membership* (which, against the background of the alleged nature of the Party's program and the role of members in its promotion, may connote more than mere *belief* in Communism) constitute a reasonable preliminary examination to establish witnesses' interest and bias so that their testimony can be properly evaluated.

Such cases as *Thornhill* v. *Alabama,* 310 U.S. 88, *Bridges* v. *California,* 314 U.S. 252, *West Virginia Bd. of Education* v. *Barnette,* 319 U.S. 624, and *Thomas* v. *Collins,* 323 U.S. 516, upon which petitioners rely (L. Pet. 53-54, 83-84), are in our view inapposite. In each of those cases the Court was concerned with the effect of legislative, executive, or judicial action which imposed a restraint upon speech, the press or assembly, or which punished individuals for having published their views or for having joined an association, or which required adherence to a belief. Here, however, while disclosure before the Committee of membership in the Communist Party or the Screen Writers' Guild may have caused petitioners unfavorable publicity and consequent economic damage and, thereby, have discouraged others from subjecting themselves, by affiliation with the Party or the union or by the expression of heterodox beliefs, to the risk of a similarly unfavorable reaction from the public

and their employers, and while the content of motion pictures may have been influenced by the producers' fears lest the use of the screen to express any ideas other than those deemed proper by the Committee might result in unfavorable publicity, it does not follow that the First Amendment was violated.[8] For it is not this sort of indirect consequence of public disclosure with which the First Amendment is concerned. Such indirect consequences may result from any public investigation. The Amendment does not provide, however, that Congress may not inform the public; it provides that "Congress shall make no law * * * abridging the freedom of speech, or of the press". It was designed to prevent attempts by law to curtail freedom of speech. But it was not intended to protect persons against unfavorable public opinion, even though such opinion may be stimulated by disclosures made to or by an investigating body. Nor does the possibility that persons may voluntarily refrain from expressing their views in order to avoid a hostile public reaction mean that any law has abridged their freedom of speech.

Whether or not the Amendment embodies a freedom to be silent generally, as is urged, it certainly does not accord a privilege to be silent when called upon to testify before a lawful body of inquiry. For no investigation would be constitutional if that were the case. And, obviously, the First

[8] No question concerning the privilege against self-incrimination is involved in these cases.

Amendment itself does not make unlawful the otherwise proper use of compelled testimony even if the inquiry does interfere with the alleged freedom to be silent.

The same conclusion may be reached by a different route, if it be assumed that such indirect effects are of the sort to which the First Amendment might apply. First Amendment rights are not absolute. They have never been thought to preclude compulsion to testify. The power to compel testimony for public purposes—legislative as well as judicial—is essential to the existence and operation of organized society. Not infrequently, compelled disclosures may bring persons into disfavor or disrepute, may result in loss of employment or other manifestations of individual or popular ill-will. But the need for accurate first-hand information as a basis for governmental action has been deemed to outweigh the personal inconvenience resulting from compelled disclosures. And this is so even if the rights claimed are thought to be within the field generally reached by the First Amendment. For claims to rights under the First Amendment must be balanced against other legitimate and essential needs of the community.

This Court has noted that even where freedom to criticize the courts was involved, "reviewing courts are brought in cases of this type to appraise the comment on a balance between the desirability of free discussion and the necessity for fair adjudi-

cation, free from interruption of its processes". *Pennekamp* v. *Florida*, 328 U. S. 331, 336. In so far as compulsory testimony is concerned, the interest of privacy is overbalanced by the need for an efficient exercise of judicial power. Similarly, when the necessities of the legislative process are contrasted, not with any direct restraint upon the right to speak one's views, but with the indirect deterrent resulting from fear of public opinion aroused by the disclosure, we submit that the former interests outweigh the latter. Cf. *National Maritime Union of America* v. *Herzog*, 78 F. Supp. 146, 165 (D.D.C.), affirmed, 334 U. S. 854.

The alleged abuses by the Committee of which petitioners complain, *i. e.*, that it sought to intimidate motion picture producers to discharge and "blacklist" certain writers and to make only the kind of pictures which the Committee believed should be seen by the American people (see, *e. g.*, L. Pet. 8-12, 64-68), are not material to the issue here presented. It is our position, simply stated, that the Committee was empowered—and constitutionally so—to inquire into the extent to which this medium of mass communication was being used to spread Communist propaganda, and that the specific questions for the refusal to answer which petitioners were convicted were pertinent to that inquiry, and did not infringe any constitutional rights of petitioners. If, in other respects, the members of the Committee or its investigators transgressed the bounds of the power which was entrusted to the Committee by Congress, the

remedy lies with Congress and, ultimately, with the voters.

3. Petitioners' contention (L. Pet. 88-94; T. Pet. 25-28) that the decision in *Christoffel* v. *United States*, 338 U. S. 84, determines that a validly constituted subcommittee was not present when petitioners appeared and refused to testify, rests upon an unwarranted expansion of the scope of that decision. In the cited case the Court construed the rules of the House of Representatives as requiring that a majority of the members, constituting a quorum, of a committee must be present at the time an alleged perjury is committed; otherwise the committee is not a competent tribunal. The requirement was held not satisfied by a showing merely that a majority was present at the opening of the session, even though no question of lack of quorum was thereafter raised. But certainly nothing in that decision implies that a committee of the House cannot act through a subcommittee,[9] provided that the subcommittee is appointed in accordance with rules of the House. Nor are the rules of the House required to be written and explicit. Custom and practice may serve to reveal the prevailing rule. Thus, the crucial questions here are (a) whether the Chairman had the authority, under the rules of the House, to appoint subcommittees at the times petitioners appeared; and

[9] The Committee on Un-American Activities is expressly authorized to function through subcommittees. Rule XI (q) of the Rules of the House of Representatives, *supra*, pp. 4-5.

(b) whether his authority was in fact exercised—*i. e.* whether he appointed, as subcommittees, the two groups of members before whom petitioners appeared.

(a) Clearly, the first question—whether the Chairman had power to designate the subcommittees—presented a matter of law for determination by the trial court. And we think the court correctly construed the House rule on that subject, as expressed in its prevailing custom and practice. For, as the House Parliamentarian testified (T. R. 362): "* * * by immemorial custom subcommittees have always been appointed by the chairman of the full committee." Petitioners' argument (L. Pet. 90) that only the committee itself, by majority vote, can delegate its authority to a subcommittee may be true in the sense that the committee retains an ultimate veto over its chairman's action. But initially the chairman has the authority to designate subcommittees to act and it is clear in these cases that no veto or challenge was exercised by the full Committee. To the contrary, the Committee's action in reporting to the House petitioners' refusals to testify may be construed as a tacit recognition by the Committee that its Chairman had authority to designate the subcommittees before whom petitioners appeared.

(b) Petitioners urge that both trial courts invaded the juries' province by failing to submit "the factual question as to the authority of the

chairman to determine that a sub-committee should sit and to designate it" (L. Pet. 90). But, as we have stated, the existence of his authority was a question of law for the trial court to decide, and the only factual question was whether the particular groups before which petitioners appeared had been designated as subcommittees by the Chairman. And the latter question was indeed left to the juries' determination.[10] The instruction on this point in the Trumbo case was as follows (T. R. 545-546):

> * * * If you find, beyond a reasonable doubt, that the Committee on Un-American Activities met on this date in the District of Columbia with Congressman Thomas presiding; that he called the meeting to order; that he designated and appointed the subcommittee to sit on that occasion, consisting of himself, Mr. McDowell, and Mr. Vail; and that they were all physically present during this period, when the defendant appeared, was sworn, and was interrogated before the committee, then you may find that a validly constituted subcommittee of the Committee on Un-American Activities was sitting at and during the period of defendant's appearance and interrogation

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[10] *Fleishman* v. *United States*, 174 F. 2d 519 (C.A. D.C.) and *Bryan* v. *United States*, 174 F. 2d 525 (C.A. D.C.), petition for writs of certiorari pending (Nos. 98, 99), are distinguishable, for in each of those cases the trial court instructed the jury that, as a matter of law, a quorum of the committee was present when the witness appeared and that the committee, therefore, was validly constituted.

> before this committee, with authority to make the inquiries involved in this case.[11]

4. Petitioner Lawson urges (Pet. 95-100) that he was prejudiced by a portion of the court's instruction which he claims equated failure to give a responsive answer with the refusal to answer which is interdicted by the statute. But if the charge to the jury is viewed in its entirety, and in the light of the fact that petitioner's testimony before the Committee was submitted *verbatim* to the jury, the court's use of the practical illustration of which petitioner complains loses the prejudicial color which, in the abstract, it might have had. For the court carefully instructed the jury (L. R. 358):

> * * * If you believe from the evidence that the defendant was attempting to answer the question, but he was not allowed to answer it by the committee, then, of course, it would be your duty under the law to return a verdict of not guilty on this charge.

Moreover, it was made clear to the jury that an essential element of the offense charged against petitioner was a *wilful* (*i. e.*, "deliberate and intentional, and not inadvertence or accident") refusal to answer the Committee's question (L. R. 356-375). In view of these and other precautionary instructions, it is evident that the trial court conveyed to the jury a proper direction that only if it should find a deliberate evasion by petitioner

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[11] A similar instruction was given in the *Lawson* case. (L. R. 335.)

of the question concerning his membership in the Communist Party or a virtual frustration of that particular inquiry, would a finding of a wilful refusal to answer be warranted. A reading of petitioner's testimony before the Committee (L. R. 188-197), makes it difficult to perceive how the jury could have reached any other finding.

5. Petitioner Trumbo complains (Pet. 28-32) of the portion of the charge in which the jury was instructed that he could only state his objections to the Committee's questions but could not elaborate upon them. This instruction is distorted by petitioner into a direction to the jury to convict since, petitioner claims, the evidence showed he had repeatedly made objections and elaborated upon them. This contention is entirely without merit. The court was careful to emphasize throughout the charge that only a deliberate refusal to answer one or both of the specific questions put by the Committee would warrant a conviction, and the court's reference to petitioner's repetition and elaboration of objections was merely parenthetical. The court stated, "He did not have the right to insist upon any elaboration of his objections or repeatedly to state his objections instead of answering the questions" (T. R. 547). This, we submit, was a proper statement of the applicable legal principle.

6. Petitioner Lawson contends (Pet. 101-103) that the trial court committed prejudicial error by unduly restricting his cross-examination of Chair-

man Thomas. The extent of cross-examination rests, of course, in the sound discretion of the court (*Glasser* v. *United States,* 315 U. S. 60, 83) and, in our view, the instances cited by petitioner fail to support his claim of an abuse of that discretion.

He insists (Pet. 101) that he should have been allowed, upon cross-examination, to prove that "the Committee was not actually investigating anything, but on the contrary was carrying on a proceeding designed to blacklist the defendant and to censure the screen." But this would have amounted to an attack upon the motives of the Committee and an attempt to show that the Committee had abused its powers in other respects. The alleged ulterior purposes of the Committee members are not proper matters for judicial inquiry. If an examination of such matters were allowed, every recalcitrant witness before a congressional committee could turn his trial for contempt into a protracted trial of the motives of the members. And, as we have stated before, any abuse of the Committee's power elsewhere would not affect petitioner's duty to answer the question put to him.

Petitioner complains also that he was not permitted to adduce, on cross-examination of the Chairman, the contents of the written statement which he had tried to present to the Committee. This was error, he contends, because it removed from the jury important evidence bearing upon the issue of his wilful refusal to answer the Commit-

tee's questions. The most that would have been relevant, however, would have been that petitioner was seeking to assert objections to the Committee's inquiry, not the grounds of his objections in detail. And since his testimony before the Committee, which was read in its entirety to the jury (L. R. 188-197), makes adequate reference both to his prepared statement and to his objections, it does not appear that petitioner was in any way prejudiced.

Nor did the trial court abuse its discretion in limiting further cross-examination in respect of the pertinency of the Committee's questions, after ample opportunity had been afforded for cross-examining Chairman Thomas on this issue (L. R. 228-244). The test, after all, was not the truth or falsity of the allegations made against petitioner by other witnesses, but only whether the Committee had a reasonable basis for investigating alleged Communist infiltration of the motion picture industry and whether the question asked petitioner was pertinent to that subject matter. And, of course, since the issue of pertinency was a matter for determination by the court, evidence on that point was properly kept from the jury. *Sinclair* v. *United States,* 279 U. S. 263, 298.

7. The trial court excluded evidence that, in reporting to the House petitioner Lawson's refusal to answer, the Committee did not include his motion to quash the Committee's subpoena, his pre-

pared statement, and his application to recall for cross-examination those witnesses who had testified against him. This exclusion, Lawson contends (Pet. 104), was prejudicial error since he was thereby prevented from showing that the Committee had failed to comply with the statutory requirement (2 U. S. C. 194, *supra*). Not only was such evidence immaterial to any issue before the jury, but, even considered as an attack on the indictment, the contention lacks merit. The statute provides merely that when a witness refuses to answer a pertinent question, the "fact of such failure" shall be reported to the House, but this does not mean that every paper delivered to a committee by or on behalf of a contumacious witness must be incorporated in the report. The essential facts were embodied in the transcript of petitioner's testimony which was sent to the House by the Committee (L. R. 383-392), and which referred to the matters which petitioner now complains were "suppressed". We believe the House had adequate information on which to base a decision whether to vote for the resolution certifying petitioner's contempt to the United States Attorney (L. R. 383-393).

8. Both petitioners contend (L. Pet. 34, 105-107; T. Pet. 32) that government employees are disqualified as a class from jury service in cases of this type. Their impartiality is claimed to be impaired by the fear, stemming from the "loyalty order"

(Executive Order 9835), that a verdict in the defendant's favor might be construed as sympathetic association with members of organizations which have been labeled "subversive" by the Committee and by the Attorney General. This is substantially the same question as is involved in *Dennis* v. *United States,* 171 F. 2d 986 (C.A. D.C.), in which certiorari has been granted (No. 14, this Term), limited to the question whether government employees could properly serve on the jury which tried Dennis for a similar violation of R. S. § 102 in failing to respond to the Committee's subpoena. The decision in that case will presumably be dispositive of that issue here.

9. An attack on the entire jury panel was made by petitioners because the questionnaire sent to prospective jurors asked, "Have you any views opposed to the American form of government?" and because the handwritings of prospective jurors were appraised to determine tentatively whether they had adequate intelligence for jury service. But the question in respect of belief in our form of Government was apparently innocuous. No one was disqualified for any answer to that question; indeed, as a practical matter, it was interpreted as barring only those who expressed a belief in the overthrow of the courts of the United States (T. R. 87). And although, in the preliminary stages of selection (which, it should be noted, was subject to correction upon further investigation (see T. R.

193)), the Jury Commissioners may have attributed some weight to handwriting where none was warranted, there does not appear to have been any exclusion, systematic or otherwise, of any group or individual on economic, social, religious, political, or geographic grounds. Among the qualified jurors on the panels from which the trial juries were selected were a messenger, waiter, maid, taxi-driver, truck-driver, soda clerk, typist and others in the lower economic groups (see, L. R. 94-96; T. R. 148-149) which is some indication perhaps that, contrary to petitioners' contentions, no discrimination was practiced on that score. In any event, as the Court of Appeals correctly observed (L. R. 572): "An examination of the record discloses nothing which would indicate that 'an impartial jury drawn from a cross-section of the community' [citing *Thiel* v. *R. R.*, 328 U.S. 217, 220] was not obtained in each case below."

CONCLUSION

The decision below is correct and is not in conflict with any decision of this Court. Although the issue as to the Committee's authority to question petitioners as to their membership in the Communist Party is of great importance, it has been twice resolved against the petitioners' contentions by the court below (in this case and in *Barsky* v. *United States, supra*), and that court's views in this respect seem so clearly correct, and the petitioner's arguments so remote from the issues presented by

this case, as to make any review by this Court unnecessary. Subject to the reservation noted as to the issue of exclusion of government employees from jury service in cases of this type, the petition should be in all respects denied.

Respectfully submitted,

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